HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C. 43/2006, Cr. MP No.42/2006, Cr. MP No. 57/2007 and Cr. MP No.58/2007

Date of Order : August 16, 2007

Savita Gupta **Vs.** **Ramesh Chander Sabharwal**

Coram

Hon'ble Mr. Justice Virender Singh

Appearing counsel:

For Appellant(s) : Mr. S.K Shukla, Advocate.
For Respondent(s) : Mr. A.K. Sawhney, Advocate

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i) Whether approved for reporting in Press/Journal/Media **: Yes/No.**

i) Whether to be reported in Digest/Journal **: Yes/No.**

Through the instant petition, petitioner Savita Gupta wife of Shri Vivek Gupta is praying for quashing of the complaint and the order dated 11-08-2005 vide which process has been issued against her to face trial. The said complaint is presently pending before learned Chief Judicial Magistrate, Rajouri. The alternative prayer made herein is for the transfer of the aforesaid complaint from the court of Chief Judicial Magistrate, Rajouri to the Court of any Judicial Magistrate having jurisdiction at Jammu.

Mr. Shukla submits that so far as alternative prayer for transfer of case is concerned, he may be allowed to withdraw the said prayer and the same be deleted from prayer clause also, for the reason that earlier also the parents of the petitioner had knocked the doors of this

Court vide their separate petition for quashing of the complaint qua them wherein the prayer for transfer of complaint was also agitated. However, this Court, while disposing the said petition, observed that since the Chief Judicial Magistrate was ceased of the case, the accused (petitioners) could raise the said plea before the trial court itself. Mr. Shukla fairly states that the said plea shall not be available to him once again.

Mr. Sawhney, learned counsel for the respondents, has not raised any objection to it. Therefore, I allow the oral prayer made by Mr. Shukla and order deletion of clause No. (ii) from the prayer clause of the main petition.

Mr. Sawhney, at the very outset, has raised a preliminary objection to the maintainability of the instant petition, submitting that earlier also when the parents of the petitioner had filed a separate petition (561-A Cr. PC No.115/2005) for quashing in this Court, the petitioner was also arrayed as one of the respondents. The said petition was dismissed by this Court vide order dated March 24, 2006, observing that there was sufficient prima facie material on the file to take cognizance under section 498-A, 120-B RPC. While drawing my attention to the said order, Mr. Sawhney contended that the petitioner cannot be allowed to re-agitate the same issue once

Again, as it would amount to reviving the earlier order.

Mr. Shukla, on the other hand, submits that may be, the petitioner was arrayed as one of the respondents in the aforesaid petition, but the contesting respondent was Ramesh Chand Sabharwal, the complainant only, and all other respondents were pro-forma respondents being co-accused. The petitioner was not even served in the said petition. Otherwise also, the earlier petition was qua the parents and the Court finding is also qua them only, which will have no effect upon the other accused at all. The case of the petitioner is entirely on different footing and to be decided individually on its own merits.

According to Mr. Shukla, the observation made in the aforesaid earlier petition can, at the most, be taken into account vis-à-vis the jurisdiction aspect and not beyond that. So far as jurisdiction is concerned, the petitioner has already made a prayer for withdrawing the relief of transfer of the main complaint and, therefore, the instant petition being maintainable deserves to be decided independently.

I find substance in the submissions made by Mr. Shukla.

The petitioner herself has placed on record the certified copy of the earlier petition bearing 561-A Cr.P.C. No.115 of 2005 filed by her

parents and for deciding the issue of maintainability of the instant petition qua the petitioner, it is necessary to reproduce the operative part of the order passed by this Court in the aforesaid petition. The same reads thus:-

> "Respondent No.1 is the father of one Sucheta Verma who is married to accused Narinder Verma. It is alleged by the respondent that Narinder Verma has extra marital affair with one Meenakshi Tickoo and whn this fact became known to his daughter and she objected to it, Narinder Verma and other accused persons (petitioners herein) started harassing hisk daughter and maltreated her. Details of the acts allegedly committed by the accused have been mentioned by the complainant in paras 6 to 11 of the complaint.
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> Learned counsel for the petitioners would argue that there is no merit in the complaint as false and baseless accusations have been levelled against the present petitioners. He further submits that the acts, if any, have taken place at Jammu, as such, the Court at Rajouri has got no jurisdiction to hear the case. He has therefore prayed for quashment of the complaint or in alternative for transfer of case to Jammu.

In view of the above, there remains no doubt that the earlier petition (561-A Cr. PC No.115 of 2005) was decided qua the parents

of the petitioner only and would have certainly no effect upon the decision of the instant petition which, in my view, deserves to be decided individually on merits. It does not amount to reviving the earlier order. Finding no substance in the objection raised by Mr. Sawhney, I hold that the instant petition is maintainable.

Mr. Shukla makes another oral prayer for deleting the names of Respondents Nos.2 to 7 from the array of respondents, to which Mr. Sawhney has again no objection. Allowed, as prayed for.

I now intend to dispose of the main petition on merits.

Heard learned counsel for both the sides at length. Records of the main complaint from the trial Court have also been summoned, perused the same.

To be precise on facts, the complaint reveals that Smt. Sucheta Verma daughter of the complainant-respondent (Ramesh Chander Sabharwal) had married to Narinder Verma, brother of the petitioner, on 7.10.2002. A son had also born out of the wedlock. For some time, Sucheta was comfortable in her matrimonial home, but thereafter she was subjected to harassment by all the family members of her in-laws including the petitioner. It is then alleged that it revealed that her husband was having extra marital affairs with one lady, namely Meenakshi Tickoo (arrayed as accused) with whom he used to talk on

phone for hours together. Her telephone number is also depicted in the complaint. It is then alleged that whenever Sucheta used to object to the talk between two, her husband would hurl abuses on her and asked her to get out. She was thrown out of house on different occasions and, ultimately, in the year 2005. Within a month thereafter, the present complaint was filed. The main allegation levelled against the petitioner, as revealed from para No. 10 of the complaint, is that she had told her friends that her brother had not accepted Sucheta as his Bhabhi.

Admitted position before me is that may be at the time of marriage of Sucheta, the petitioner was unmarried and got married subsequently within a year (October 2003). There is a typographical mistake in the main petition with regard to the year of the marriage of the petitioner (year 2002), but the same is insignificant now. At present, she is staying in her matrimonial home. It is also the admitted position that petition under Hindu Marriage Act filed by the husband and of maintenance petition under Section 488 Cr. P.C. filed by the wife, are also pending between the parties.

Mr. Shukla contends vehemently that so far as petitioner is concerned, the allegations against her do not, prima facie, make out a case of cruelty, being false and frivolous on the face of it, and it appears that she has been roped in by father of estranged wife by

knitting a net wider on account of marital discord. Strengthening his arguments, Mr. Shukla then submits that, as a matter of fact, the marriage went into rough weather on account of certain other reasons, which are otherwise evident on record and the petitioner has fallen prey in this case without there being any fault of her. He then contends that if one reads the entire complaint or the preliminary evidence recorded by the trial court, no nexus of the petitioner at least can be shown in the entire case vis-à-vis demand of dowry or cruelty from her side. The complaint and the evidence led so far do not fulfil the ingredients of section 498-A RPC qua her. The petitioner, who is admittedly staying in her matrimonial home since October 2003, cannot even be remotely connected with the commission of alleged offence even with the aid of section 120-B RPC. Very vague and general allegations have been levelled against her, which in any case cannot be said to be, prima facie, enough for taking cognizance. Mr. Shukla has read the entire preliminary evidence before me and submits that the continuation of the proceedings out of the present complaint, qua the petitioner at least, would be sheer abuse of the process of the Court and deserve to be quashed, under the inherent powers of this Court.

Repudiating the submissions advanced by Mr. Shukla, Mr. Sawhney submits that, at this stage, the court has not to embark upon

an inquiry about the reliability of evidence recorded by the trial court as this exercise is to be left to the trial court only. What is to be seen is as to whether the evidence on record is prima facie sufficient for issuance of process or not. In the case in hand, according to Mr. Sawhney, the preliminary evidence recorded in support of the complaint was sufficient for issuance of process and, therefore, this Court, while dismissing the earlier petition filed by the parents of the petitioner also observed in this regard. Mr. Sawhney then submits that at the time of marriage, the petitioner was staying with her parents and she too had joined hands in harassing Sucheta. Getting married subsequently, may be within one year, would not absolve her of the liability. Therefore, the instant petition deserves to be dismissed.

After hearing the rival contentions of the either side and going through the complaint and the preliminary evidence recorded before the issuance of process against the petitioner and her co-accused, I am of the considered view that the complaint and the summoning order, qua the petitioner at least, deserve to be quashed.

The Apex Court has examined the ambit and scope of the power under Section 482 Cr. PC (equivalent to Section 561-A Cr. PC of 1989) read with Article 227 of the Constitution in the case of ***M/s***

Pepsi Food Ltd. and another vs. Special Judicial Magistrate and another, 1997 (4) RCR (Crl.) 761 (SC), and observed as under:

> "It is settled that High Court can exercise its power of judicial review in criminal matters. In ***State of Haryana and others vs. Bhajan Lal and others, 1991 (1) RCR (Crl.) 383 (SC) : JT 1990 (4) SC 650 : 1992 Supp. (1) SCC 335,*** this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the power of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Court. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but it is also of judicial nature. This article confers vast powers on the High Court to

> prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution to be exercised in using these powers."

In ***G. Sagar Suri v. State of U.P., 2000 (1) RCR (Cri.) 707 (SC),*** their Lordships of the Apex Court while answering the same question and dealing with the scope of the powers of High Court under Section 482 Cr. PC or Article 227 of the Constitution vis-à-vis the agony of the accused during a criminal trial, referred to the decisions in M/s Pepsi Food Ltd.'s case (supra) as also in ***Ashok Chaturvedi and others v. Shitul H. Chanchani and another, 1998 (3) RCR (Cri.) 801 (SC).***

Let us advert to the facts of the case in hand.

Sucheta and her father have stepped into witness box. Sucheta stated that she had got married to Narinder Verma on 7.10.2002 and after few days she came to know that her husband was having extra marital relations with Meenakshi Tickoo. She then stated that at the time of marriage, all the accused had put a demand for dowry, which included the cash, and her father had got three drafts prepared from State Bank of India and handed over to her husband. She then

alleged that thereafter the accused started making the demand and on 3.11.2004, her husband had turned her out of the house. She further alleged that thereafter his parents' side had come to the house of the husband to make him understand and she went to her matrimonial home, but in the month of June/July, 2005 she was again turned out. She then came to her parents' house and filed the complaint through her father.

Ramesh Chander Sabharwal also talks of handing over the drafts to her son-in-law. In general, he says that all the accused had made a demand of dowry and cash after the marriage. He also talks of the extra marital relations of Narinder Verma, his son-in-law with a lady. Virtually, he toes the line of his daughter.

No doubt, it is alleged that after the marriage of Sucheta with Narinder Verma, a demand for dowry was put to the complainant side and for that purpose, the petitioner, who at that time was an unmarried girl, is also shown to be with other accused, but the fact remains that the complainant (father of Sucheta) had handed over the drafts to his son-in-law (the husband). The real dispute started when Sucheta came to know that her husband was having extra marital relations with one lady, namely Meenakshi Tickoo. The only allegation against the petitioner, as depicted in the complaint, is that she used to tell her friends that her brother had not accepted Sucheta

as her Bhabhi. Sucheta, however, does not say a word about this fact in her preliminary evidence. Admittedly, the petitioner got married after few months some time in October 2003. It is clear from the preliminary evidence that for the second time, when Sucheta was turned out by her husband in November, 2004, at that stage, the petitioner was admittedly not staying there. Therefore, she cannot be blamed for any act of her brother. The tiff continued upto July, 2005.

From the totality of the facts and circumstances, it can be said that, prima facie, there is no evidence against the petitioner at least and she has been dragged into this litigation without any reason. Even otherwise, there is no specific allegation against her. They are vague in nature and, as such, she cannot be connected even with the demand of dowry. Therefore, no cruelty at all can be attributed to her. It appears to me that a casual approach has been adopted by the trial Court in summoning her.

In ***Kans Raj v. State of Punjab and others, 2000 (2) RCR (Cri.) 695 : AIR 2000 Supreme Court 2324,*** their Lordships of the Apex Court have observed that a tendency has developed for roping in all the relations in dowry cases and if it is not discouraged, it is likely to affect case of the prosecution even against the real culprits.

The efforts for involving the other relations ultimately weaken the case of the prosecution even against the real accused.

In another judgment of Delhi High Court rendered in ***Savitri Devi v. Ramesh Chand and others, 2003 (3) Recent Criminal Reports 823 (Delhi),*** it has been observed that there is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing. A suggestion has been given to the law making authorities to have a review of the situation and the legal provisions.

In another judgment of Andhra Pradesh High Court in ***Saritha* v. R. Ramachandra, 2003 (1) RCR (Cri.) 481 (A.P.) (DB),** the Hon'ble Division Bench while dealing with a case under Section 498-A IPC has observed that the things have now taken a reverse trend and the women are abusing beneficial provisions of Section 498-A

As a sequel to what is discussed hereinabove on the basis of the material before this Court and following the ratio of the aforesaid judgments, I am of the considered view that the continuation of the proceedings arising out of the present complaint against the petitioner at least, is sheer abuse of the process of the Court and, therefore, the complaint and the impugned summoning order qua her deserve to be

quashed. Ordered accordingly. To make it clear, the instant petition stands allowed qua the petitioner only.

Since the trial court record was summoned by this Court, the same be remitted to the Court concerned at once, where the complainant and all other accused (except the petitioner) would appear on 10th of September, 2007. Learned counsel for both the sides assure that they would inform the respective parties of the date fixed before the trial Court.

(Virender Singh)
Judge

Jammu
August 16, 2007
T.Arora, PS